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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/071,138	02/08/2002	Megan N. Schlegel	0112300-742	3115
29159	7590	03/01/2005		
BELL, BOYD & LLOYD LLC P. O. BOX 1135 CHICAGO, IL 60690-1135			EXAMINER MOSSER, ROBERT E	
			ART UNIT	PAPER NUMBER
			3714	

DATE MAILED: 03/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/071,138

Applicant(s)

SCHLEGEL ET AL.

Examiner

Robert Mosser

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-64 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-64 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>8-02-2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION



Responsive to the amendment filed 8-02-2004.

Claims 1-64 are rejected.

The information disclosure received 8-02-2004 is enclosed.

This action is final.



Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims **1, 4-31, 32-38, 40, 43-50, 54-58, and 61-64**, are rejected under 35 U.S.C. 102(b) as being anticipated by Kamille (US 5,855,514).

Regarding at least claims **1, 4-5, 17, 27, 33, 40, 43, 45-47, 49, 54, 55, 61, and 63-64** Kamille teaches a probability lottery game wherein individual tickets are sold for at a given cost (Fig 3,4c, 9, 13-15), herein understood as equivalent to a primary game operable upon a wager by a player. Kamille teaches the use of virtual embodiments of his invention including video television, slot game machine and or computer networks (e.g. Internet, World Wide Web, Intranet) wherein the above embodiments are

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understood to require the use of a processor in communication with a display device for functional realization of the invention (Col 5:32-39). Kamille further teaches the use of a base game event to trigger a secondary game wherein the secondary game includes the displaying by a display device of a plurality of player selectable symbols comprising a target set, wherein at least one of said symbols is designated the target symbol (Col 9:28-37). Kamille further teaches a relationship identifier between the target symbol and symbols selected by the player using a symbol selector in the form of indicating the target symbol being selected in element 407 or alternatively clues in various embodiments (303, Fig 7, Col 10:27-44). The claimed symbol selector and related symbol selector in communication with the processor are understood as the manner or method employed by the gamer to indicate their selection of a symbol from a game set of selectable symbols and would be required in order for the electronic embodiments of Kamille disclosed above to function.

Regarding at least claims **6, 29-31, 33, 55-57, and 62**, the figures of Kamille are interpreted to show a limited number of picks that may be understood to be predetermined number and that are realized in a random manner. In figure 4b the player has the option of making only one pick in the second portion of the game. On the occurrence that the player selects element 407 in the second portion of the game they have selected the target symbol and retain their ability to make another pick if they so decide to however, on the occurrence they fail to select the target symbol then they have lost their pick to a void symbol and hence have ended their game. Hence while the predetermined number of picks would be one, the player can extend the number of

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uses of this pick and hence realize additional picks through the selection of target symbols. While the player has no ability to foresee the result of his selection prior to making the selection the result of the selection is understood as a random event.

To further support this Kamille shows an additional multi-tier embodiment shown in figure 4c and discussed in column 9:28-37.

While the examiner notes that Kamille states that his invention does not limit the number of attempts a player may take (Col 6:3-8) however, given the entirety of the disclosure regarding this aspect and the various card templates shown throughout the figures the examiner asserts that there are a finite number of total possible selections for each embodiment and that further as presently claimed these embodiments may be interpreted as always allowing the predetermined number of one pick. Kamille further supports this through allowing multiple voids to be selected prior to the end of the game (Col 5:59-62) thus equating to a predetermined number of picks in excess to one pick.

Regarding at least claims **7, 20, 27, 35, 44, 45, 46, 48, 50, and 58** Kamille teaches increasing the payout or win amounts associated the selection of the target symbol when the target symbol is selected with additional picks remaining (Col 9:28-37).

Regarding at least claims **8 and 9**, Kamille teaches an award equal to the value of the target symbol (Fig 3).

Regarding at least claims **10-14, 21-24, 27-28, 32, 40, 44, 46, 54, and 61** Kamille teaches multiple target sets in at least figure 3 as presently claimed. Figure 3 may be interpreted as showing two separate target sets presented in horizontally aligned groups

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of three. In this case if a player selected element 301 from the first target set and element 302 from the second target set they would acquire the displayed one-dollar prize from element 301 and the displayed fifty-cent prize element 302. As both elements correspond to the two previously presented target sets as claimed, this presents a combined award of the instant claims (Col 8:1-50).

Regarding at least claims **15, 17, 25, 33, 36, and 38**, Kamille teaches the probability associated with the assignment of target symbols with a game piece and hence symbol locations as being adjustable based on desired game payout amount (Col 7:10-26 & 9:38-46).

Regarding at least claims **16, 18, 19, 26, and 37** Kamille teaches the alteration of target symbol selection probability based on the number of picks remaining in a set and specifically the increasing probability of target selection with decreasing set size (Col 9:1-27).

Regarding at least claim **34**, Kamille teaches indicating at least when the selected number is equal to the target number in Figure 4b, in addition to the indicated relationship/clue indicators previously mentioned in the address of the first grouping present in this rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kamille (US 5,855,514) in further view of Heidel et al (US 5,342,047)

Kamille is silent on the inclusion of buttons in a mechanical embodiment as understood, however Heidel teaches the inclusion of mechanical buttons wherein each button corresponds to each of said player selectable symbols in a target set thus allow the player to select symbols (Fig 1, elm 32). It would have been obvious to one of ordinary skill in the art at the time of invention to have incorporated the buttons of Heidel et al in the invention of Kamille in order to accelerate game play as taught by Heidel et al (Col 1:34-43).

Claims 3, 41, 42, 51-53, and 59-60, are rejected under 35 U.S.C. 103(a) as being unpatentable over Kamille (US 5,855,514) in further view of Gura (US 6,159,097).

Regarding claim **3** and in addition to the above stated. Kamille is silent regarding the use of a touch screen, however Gura teaches the use of a touch screen in a selection game (Col 3:3:10-11). It would have been obvious to one of ordinary skill in the art at the time of invention to have used the touch display of Gura in the invention of Kamille in order to allow users to utilize their personnel touch screen monitors in the play of the game.

Regarding claims **41, 42, 51-53, and 59-60**, in addition to the above stated. Kamille is silent on the awarding of the above-described free game however, Gura teaches the awarding of a bonus game (Col 6:28-46). As understood the awarding of a bonus game in of itself specifies the claimed "less than a predetermined award level" and the description of a bonus game by definition defines one free game or equivalently a number of free games being only one game. It would have been obvious for one of ordinary skill in the art at the time of invention to incorporate the bonus game of Gura into the game of Kamille in order to offer the user a higher level of excitement as taught by Gura (Col 157-63)

Claim **39** is rejected under 35 U.S.C. 103(a) as being unpatentable over Kamille (US 5,855,514) in further view of Gura (US 6,159,097 in yet further view of Kennard et al (3.825,255).

The invention of Kamille/Gura is silent on providing separate indicators for indicating that a target number is higher or lower then the selected number, however

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Kennard et al teaches the use of two separate indicators (92, 97) for indicating whether or not a number is higher or lower than the selected number. It would have been obvious for one of ordinary skill in the art at the time of invention to have incorporated the indicators of Kennard et al into the invention of Kamille/Gura in order to provide assist the player in locating the target image (symbol or number).

Claims **13, 24, 28, and 40** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kamille (US 5,855,514) in view of Walker et al (6,561,902).

Those it is believed as presently claimed that the summation of awards may be considered based on order despite the end result (in a fixed set addition being the same regardless of order utilized in addition) the following is presented to address the interpretation that an award based on the order of award selection might be considered to yield different final awards if chosen from the same set. The invention of Kamille is silent on providing "different" awards based on the order of selection of elements (not presently claimed), however Walker et al discloses the this feature in a game with user selected elements (Col 3:14-20). It would have been obvious to one of ordinary skill in the art at the time of invention to have incorporated the ordered feature of Walker et al in the invention of Kamille a in order to include an additional game goal to the player.

Response to Arguments

Applicant's arguments with respect to claim 1 through 64 have been considered but are moot in view of the new ground(s) of rejection. The previously applied reference of Lynn has been replaced with the now relied upon reference to Kamille in order to address the presented amendments. Remaining argument directed to the secondary references are premised on either their application under USC 102 or their combination with the previously applied Lynn reference and hence rendered moot.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Mosser whose telephone number is (571)-272-4451. The examiner can normally be reached on 8:30-4:30 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris H Banks can be reached on (571) 272-4419. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

REM



JESSICA HARRISON
PRIMARY EXAMINER